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SUBJECT: IRANIAN PROCUREMENT NETWORKS PUT GERMAN EXPORT
CONTROLS TO THE TEST

REF: A. BERLIN 1846

- [1](#)B. BERLIN 2164
- [1](#)C. 2005 BERLIN 1064
- [1](#)D. 2004 BERLIN 2537

Classified By: Global Affairs Counselor Donald R. Shemanski
for reasons 1.4 (b) and (d).

[1](#)1. (S) SUMMARY: Recent German and international media reports have focused on Iran's extensive efforts to procure nuclear- and missile-related dual-use technology in Germany. Although some press accounts have asserted that Iran has been able to exploit weaknesses in Germany's export control regime, German Government officials say the scope of Government efforts, including investigations and prosecutions, demonstrates the robust coverage and effectiveness of German export controls. Government officials insist German regulations provide exporters with clear guidance concerning restrictions on exports of sensitive technology and technical assistance and exporters' obligations under German law, without unduly restricting exports. Government officials are responsive to frequent U.S. demarches on Iranian procurement attempts, conscientiously investigate the information provided, and often reciprocate with information of their own. In the case of export control violations, German penalties are more lenient than those in the United States. German Government officials' legal exposure to exporters' compensation claims is often a complicating factor, as well. This message is intended to provide an overview of how Germany's export control regime functions. END SUMMARY.

EXPORT CONTROL OFFICIALS REFUTE MEDIA CRITICISM

[1](#)2. (C) In recent weeks, German media have featured reports of Iranian efforts in Germany to procure or divert sensitive technology to Iran's nuclear enrichment- and missile-related programs, including allegations that Iranian intelligence services have built up a secret network in Germany for the procurement of dual-use goods and individual components that can be adapted for military purposes. Recent media reports have also focused on the July 2007 deportation from Germany of an Iranian diplomat suspected of facilitating Iranian procurement efforts. Although MFA officials point to the press accounts as a sign that Germany's export control regime is both robust and functioning effectively, they privately lament that the increased media attention could undermine ongoing investigations and/or drive Iranian procurement networks further underground. Even before the EU's April 2007 autonomous embargo on WMD- or missile-related exports to Iran, German export control authorities had implemented a de facto - if not de jure - prohibition on exports of dual-use goods and technical assistance to Iran. In addition, Germany banned the export to Iran of all nuclear-related goods in the 1990s.

[1](#)3. (C) While media reports have focused on the relatively

light penalties - mostly fines and suspended prison sentences - handed down to German firms and individuals who have been found guilty of facilitating Iran's procurement efforts, MFA officials note that many of the sentences were given in exchange for witnesses' agreement to cooperate with a prosecutor's investigation. German Government officials continue to insist that German exporters are by and large a conscientious bunch that is anxious for clear guidance from the Government and willing to comply with such guidance. As an example, officials from the German Federal Office of Economics and Export Control (BAFA) point to the overwhelming volume of calls they have received from exporters requesting specific clarification as to what exports are prohibited by the EU's April 2007 restrictions on exports to Iran. German officials also insist that, while German businesses may not have the same compliance and disclosure obligations as their U.S. counterparts, Germany's export control regime does impose such obligation on German exporters.

HOW DOES GERMANY'S EXPORT CONTROL SYSTEM WORK?

14. (SBU) German Government officials insist that Germany's national export control regime is among the strongest in Europe. Administered by BAFA, a semi-autonomous government agency within the Economics Ministry, Germany's export control system is designed to ensure Germany's security, to uphold the country's nonproliferation commitments, and to preserve the legal right of German nationals to export goods and services. All exports of sensitive items, included those listed in various supplier group regimes, are subject to licensing requirements. Germany's export control system is based on two pieces of legislation: the War Weapons Control Act (KWKG) and the Foreign Trade and Payments Act (AWG), which is supplemented by the Foreign Trade Regulations (AWV).

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15. (U) The AWV's "export list" is divided into two categories. Part I consists of weapons, ammunition, armament materials, and dual-use goods, including those covered by the EU's "Annex 1" list. Part II includes non-listed goods and technical assistance that could be used for military purposes, including WMD- or missile-related programs. Part II also includes non-listed military- or nuclear-related goods and technical assistance destined for specified countries of concern, such as Iran and Syria. Trade restrictions and embargoes imposed by the UNSC and the EU are automatically included in AWV lists through administrative actions that become binding upon publication on BAFA's website and in newsletter updates to German industry associations. Similarly, EU dual-use regulations and lists of dual-use products, services, technology, and assistance subject to licensing requirements have been fully incorporated into German export control regulations.

16. (SBU) In order to comply with its obligations under the international nonproliferation regimes - e.g., MTCR, Australia Group, Nuclear Suppliers Group - Germany adopted a "catch-all" provision in 2000 to prevent or stop exports that could threaten its national security or impact negatively on its international relations. Under these regulations, non-listed items are subject to approval requirements on a case-by-case basis if the exporter or the government has knowledge of - or reason to suspect - an actual or intended use of commodities destined for export in the production, development, handling, operation, maintenance, storage, or dissemination of weapons. In such cases, the exporter is required to disclose related information to BAFA, to make available items in question for analysis, and/or to produce an end-use statement prepared by the end-user.

17. (C) Under German law, the decision to issue or deny an export license is based primarily on the end-user or end-use. Individual companies are required to adhere to Germany's export-control regime and to designate a member of the board of directors as the responsible officer for export control

compliance. BAFA also requires exporters: to implement appropriate internal control measures; to ensure that customers do not transfer or re-export products without BAFA's explicit approval; to supply an end-use declaration upon request; to check the bona fides and reliability of customers through public databases; to accept and disseminate within the company Government-issued industry alerts, including confidential "early warning lists" sent to industry associations.

KEY PLAYERS

18. (SBU) Responsible for the day-to-day administration of German export control policies, BAFA typically reviews between 20,000 and 24,000 export license applications per year. Of these, about 10 percent are referred to the interagency export control working group, which consists of 14 ministries and is chaired by the Ministry of Economics. BAFA plays a central role in evaluating and presenting cases to the interagency group, including providing scientific and expert opinions. After close consultation among key ministries/agencies such as the Ministry of Economics, MFA, the Federal Intelligence Service (BND), and others as required, the entire interagency group meets at the office director level to review special cases.

19. (C) The MFA's primary role is to apprise interagency members of the impact of a possible dual-use or sensitive export on Germany's foreign policy interests and nonproliferation commitments. In contrast, the Ministry of Economics and Ministry of Finance are charged with evaluating the economic impact of export license denials and with limiting the Government's exposure to compensation claims (see para 12). The German Government does not have a dedicated line item in its budget to fund settlements or court judgments in an exporters' favor.

INVESTIGATIONS AND FINES

10. (S) If an export license application raises red flags, the interagency working group generally tasks German law enforcement and intelligence officials to investigate. The German Customs Customs Police (Zollkriminalamt, or ZKA), based in Cologne, has primary responsibility for looking into the exporters' activities within Germany. This often includes random, on-site company audits as well as court-authorized surveillance of a company's telecommunications and correspondence. MFA officials report that Germany has completed implementation of the new European Customs Code, which establishes a new electronic information-sharing system and mandates inclusion of security and nonproliferation objectives among the responsibilities of

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member states' Customs agencies. Investigations of individuals associated with an exporting company or the end-user fall to other law enforcement or intelligence entities within the government.

11. (C) German federal and state prosecutors are currently conducting several major investigations into companies and individuals suspected of illegally exporting sensitive or dual-use items (see ref A). New procedural rules implemented in 2006 have enabled a federal court in Stuttgart, responsible for crimes against the state, to try persons accused of export control violations. German Government officials claim that possible fines, confiscation of goods, and the threat of up to 15 years in prison put export-control violations on the same level with penalties imposed for murder or manslaughter. Despite the maximum sentences stipulated by German law, sentences handed down tend to be somewhat more lenient, i.e., monetary fines instead of prison sentences.

LIABILITY FOR "WRONGFUL" DENIALS

¶12. (C) In the event of a "wrongful" denial, the German Government - and also the responsible Government licensing officer personally - can be found legally liable for infringing upon the German company/individual's right to export (see ref B). If a Government error results in a license denial or revocation, the company can file a claim for compensation under Article 14 of Germany's Basic Law (Grundgesetz), which defines and protects an individual's personal property, and Article 34 of the Basic Law, which permits an individual to file a claim for compensation for damages and incurred losses if a civil servant's negligence has caused financial disadvantage. Paragraphs 48 and 49 of the Administrative Code also give an individual the right to file a claim for compensation against the Government.

¶13. (C) Government officials are sometimes reluctant to pursue companies or individuals without concrete evidence because of the personal liability risk they carry should a company seek compensatory damages from the government. As a result, decisions in such cases are generally taken at very senior levels in order to limit the personal liability of civil servants. Nonetheless, German federal and state prosecutors continue to pursue companies that have illegally exported items to countries or end-users of concern, and courts have found individuals from these companies guilty of violating national export-control laws.

COMMENT

¶14. (S) Germany is a strong partner on export control issues and an active participant in the major nonproliferation regimes. As a core PSI participant, Germany has also shown the willingness to interdict shipments of sensitive goods in a timely manner that has contributed to stemming the flow of illegal goods to end-users of concern. Receptive to USG information on companies, individuals or end-users of concern, the FRG conducts investigations across the full spectrum of business activities to substantiate or allay USG concerns about proliferation.

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